No. 96

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 96

ARTHUR LA FRANA,

Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS

BRIEF FOR PETITIONER

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BRIEF FOR PETITIONER

Opinion Below

The Supreme Court of Illinois did not render any opinion, apart from the Order Dismissing Petition for Writ of Error, which is set forth in full at page 71 of the Record. The order reads in part as follows: "It is further considered by the Court that after having examined and reviewed the petition and record in the post conviction

hearing the same is found to disclose no violation or denial of any substantial constitutional rights of the petitioner under the constitution of the United States or of the constitution of the State of Illinois, and the petition for writ of error on post conviction hearing is accordingly dismissed; also, petitioner granted leave to withdraw petition, if requested."

Jurisdiction

The judgment of the Supreme Court of Illinois was entered March 23, 1951. (R. 71). The petition for writ of certiorari was filed April 23, 1951 and was granted June 4, 1951. The jurisdiction of this Court rests on 28 U. S. C. Section 1257(3).

Question Presented

The general question is whether the Illinois Supreme Court erred in holding that there was "no violation or denial of any substantial constitutional rights of the petitioner under the Constitution of the United States" resulting from the dismissal, without a hearing, on the truth of the allegations, of a petition under the Illinois Post-Conviction Hearing Act, which alleged that petitioner had been denied due process of law through use of coerced confessions to secure his conviction. A subsidiary question is whether adjudication of the claim of coerced confession at the original trial is sufficient, as a matter of federal law, to render the issue res judicata in post-conviction proceedings.

Statute Involved

The Illinois Post-Conviction Hearing Act (Ill. Rev. Stats., 1949 Chap. 38, Secs. 826-832; Smith-Hurd-Illinois Annotated Statutes, Chap. 38, Secs. 826-832) is set forth in full in Appendix A in petitioner's brief in *Jennings* v. *Illinois*, No. 95.

Statement

On October 17, 1949, Arthur La Frana, petitioner, filed in the Criminal Court of Cook County a petition for review under the Illinois Post-Conviction Hearing Act. According to the facts set forth in the petition, the petitioner was arrested without a warrant at his home between 5:30 and 7:00 A. M. on December 30, 1937 by two police officers who took him to a police station on the pretext of having him identify a supposed suicide (R. 12). Thereafter petitioner was held in various police stations for eleven days and denied the right to see friends, relatives or counsel until he was finally arraigned in the Criminal Court, on January 11, 1938 on a charge of murder (p. 13). During those eleven days petitioner was fed only bologna sandwiches, got little if any rest, lost twenty pounds and was subjected to intense questioning and physical brutality, until he signed certain statements and participated in a reenactment of the alleged crime (R. 14-15). The exact time of the statements does not appear, except insofar as it is indicated in a question by the State's Attorney during the original trial that the petitioner confessed to certain robberies on December 31, 1937 and later participated in certain transactions, apparently the reenactment, on January 4, 1938 (R. 38-39). These statements and the reenactment were admitted in evidence, over the objections of petitioner's counsel (R. 18). The petitioner was convicted and sentenced for life on the charge of murder. He was also convicted and sentenced for the term of one year to life on the charge of robbery (R. 11).

The petition included a request for subpoenas for certain newspaper files pertaining to one Miss Betty Howard, who had witnessed the robbery but who was not called by the prosecution or otherwise revealed to the defense because she would have testified in petitioner's favor (R. 4, 20); and

also for unretouched photographs from the files of certain newspapers "taken at the Hudson Avenue Police Station in connection with the petitioner prisoner, Arthur La Frana" (R. 5). The petition was also accompanied by an exhibit showing that petitioner had petitioned for and been denied the records of his trial (R. 29, Exhibit 2) and another exhibit consisting of excerpts from the testimony of two of the police officers who had petitioner in custody during the period between arrest and arraignment, and of a doctor who testified regarding his physical condition (R. 30-40, Exhibit 3). One of the police officers testified that he and another police officer had used force to subdue petitioner when he had tried to escape from a washroom upstairs in the police station (R. 31-32, 35-36), and the doctor testified that he examined petitioner when he entered the county jail on January 11, 1938 and found that he had a black eye and bruised wrists (R. 27).

The State's Attorney moved to dismiss the proceeding under the Post-Conviction Hearing Act on the following grounds: (1) that the statute was contrary to the Illinois Constitution; (2) that some of the matters raised had been "finally adjudicated"; (3) that some of the contentions were mere conclusions, "unsupported in any part of the petition by sufficient evidence, affidavits or reference thereto"; and (4) that the matters set forth did not "show a substantial denial of constitutional rights in the proceedings which resulted in his conviction" (R. 43-44). The Trial Court dismissed the petition without, so far as appears, any opinion (R. 54).

Petitioner on March 14, 1951 filed a petition for writ of error in the Illinois Supreme Court (R. 55). On March 23, 1951 that court issued an order dismissing the petition, including therein the statement set forth above (R. 71).

ARGUMENT

The Illinois Supreme Court erred in holding that the allegations of the petition with respect to the use of coerced confessions did not, as a matter of federal law, set forth a substantial claim of denial of federal right entitling petitioner to a hearing on the truth of the allegations.

The petition originating this proceeding contained clear and specific allegations with respect to the illegal detention of the petitioner for a period of eleven days, and the extraction, during that period, of confessions secured by intimidation and brutality (R. 12-14). Even without the aid of the principle that, as against a motion to dismiss, these allegations, made under oath, must be accepted as true, *Hawk* v. *Olson*, 271, 278-279; *House* v. *Mayo*, 324 U. S. 42, 45; *Moore* v. *Dempsey*, 261 U. S. 86, 92, the excerpts from the record of the trial, consisting of the doctor's testimony with respect to petitioner's bruises when he entered the county jail eleven days after his arrest (R. 36-38), and the police officers' testimony with respect to the fight which they said took place in the upstairs washroom of the police station, when petitioner supposedly attempted to escape (R. 31-32, 35-6, 39-40), all lent sufficient credence to petitioner's allegations to require a hearing on their truth. Furthermore, even apart from the physical brutality alleged, the length of time of the illegal detention and persistent questioning leading up to the crucial confession was itself sufficient to establish its involuntary character. In this connection it should be noted that, although there is a suggestion that the first confession was made on December 31st, the day after the arrest, this confession related only to certain robberies and did not satisfy the purposes of the inquisition. It is apparent from the record that the inquisition continued at least through January 4th when the petitioner participated in the reenactment of the crime which was the basis of at

least one of the confessions introduced at the trial (R. 38-41).

The undisputed facts with respect to the illegal detention and persistent interrogation are more than sufficient to bring this case within the principles established in *Ashcraft* v. *Tennessee*, 322 U. S. 143; *Watts* v. *Indiana*, 338 U. S. 49; *Turner* v. *Pennsylvania*, 338 U. S. 62, and *Harris* v. *South Carolina*, 338 U. S. 68. The eleven-day period of illegal detention (Ill. Rev. Stat. (1949), Ch. 38, § 660, § 664; Smith-Hurd Ill. Ann. Stat. (1935) *id.*), during which the petitioner was held without arraignment and without the aid of counsel and friends, exceeded the period involved in any of the above cases; and the seven-day period of intense questioning which elapsed before satisfactory confessions were extracted, is as long as the comparable period in the *Watts* case, and longer than that in the *Ashcraft*, *Turner* and *Harris* cases. Furthermore, the pattern of events and the time sequence is shown not by pleadings artfully drawn in the light of decisions of this Court, but by questions of the State's Attorney and testimony of police officers, set forth in excerpts from the trial record. There is, therefore, no conceivable basis upon which the Illinois Supreme Court could have held that the allegations of the petition and the supporting materials, taken by themselves, did not set forth a substantial claim of denial of federal right within the applicable rulings of this Court.

In view of the substantial case thus made out with respect to the coerced confession issue, here again, as was suggested in the brief for petitioner in *Jennings* v. *Illinois*, the only plausible explanation of the Illinois Supreme Court's ruling on this issue is that it was predicated upon the proposition that since the question had been presented and adjudicated at the original trial, there was no constitutional right to its readjudication by way of collateral attack in the

post-conviction proceedings. The same reasons for rejecting this proposition which were set forth in the brief for petitioner in the *Jennings* case under Point I of the Argument are equally applicable here and are incorporated herein.

The obstacles to appeal in the present case were as real as those in the *Jennings* case. Under Illinois law petitioner could not obtain a transcript of the evidence without paying for it and the transcript was essential for presentation of his constitutional claim regarding the coerced confessions. The significance of the obstacle is attested both by the denial of his petition for a transcript of the record on March, 1948 (R. 29), and also by the following statement in his response to the motion to dismiss: "Since then he has purchased what records as he could afford, but at fifty cents per page the complete Transcript of Testimony, some one thousand papers, is out of the financial reach of his limited earning capacity of some seven dollars per month" (R. 49). It is plain that petitioner is one of those directly affected by the failure of Illinois to provide any means whereby a copy of the transcript of testimony may be obtained by an indigent defendant at the cost of the state, except where the death sentence is imposed.

In addition, it should be noted that the trial and conviction of petitioner took place in 1938, before the decisions in *Ashcraft*, *Watts*, *Turner*, and *Harris*, when the principles applicable to confessions obtained during the period of unlawful detention had scarcely been suggested. There was, therefore, an additional reason for permitting a collateral attack in post-conviction proceeding to present the question. Although a closely divided Court in *Sunal* v. *Large*, 332 U. S. 174, held that a change or clarification of the law was itself not sufficient grounds for allowing collateral attack through *habeas corpus* proceedings, the opin-

ion of the Court expressly excluded from the scope of the ruling any substantial claim of constitutional right. 332 U. S. at 182. Here we have just such a claim, accentuated by the fact that the controlling principles with respect to it were not enunciated until after the time for direct attack through appeal had passed. It is also a claim which can be established on the face of the trial record itself by admissions of the State's Attorney and his witnesses, without consideration of conflicting evidence.

Conclusion

Petitioner is entitled to a hearing on the merits of his allegations with respect to the use of coerced confessions to secure his conviction. Because the Illinois Supreme Court, on the basis of a misconception of federal law, denied him such a hearing, its judgment should be reversed.

Respectfully submitted,

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Counsel for Petitioner.